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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, APPELLANTS

v.

ANDREW PARKER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND NATIONAL CAPITAL PLANNING COMMISSION

OPINION BELOW

The opinion of the three-judge district court is reported at 117 F. Supp. 705, *sub nom. Schneider* v. *District of Columbia* (R. 45–73).

JURISDICTION

The judgment of the district court was entered November 20, 1953 (R. 83). The appeal was

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allowed December 21, 1953 (R. 84). The jurisdiction of this Court is invoked under 28 U. S. C. 1253. Probable jurisdiction was noted on March 8, 1954 (R. 89).

QUESTIONS PRESENTED

1. Whether Congress has power to authorize the use of eminent domain in the acquisition of real property for the execution of the District of Columbia Redevelopment Act, the purpose of which is to promote the public health, safety, morals, and welfare of the District of Columbia by eliminating and preventing slum and substandard housing conditions.

2. Whether the Redevelopment Act can validly provide for sale or lease of condemned property to private persons.

3. Whether Congress properly authorized the execution of the redevelopment program on an area basis to include any property, residential or commercial, necessary to eliminate the slum problem in the area, rather than authorizing the program on an individual structure basis.

4. Whether in the enactment of the Redevelopment Act Congress properly delegated authority to administrative officials for the selection of property to be acquired in carrying out the purpose of the Act.

STATUTE INVOLVED

The District of Columbia Redevelopment Act of 1945, Act of August 2, 1946, c. 736, 60 Stat. 790,

D. C. Code secs. 5–701 to 5–719, is set out in the Appendix to the Appellants' brief.

STATEMENT

This is an appeal from a judgment of a three-judge district court dismissing a complaint seeking to enjoin the condemnation of appellants' property under the District of Columbia Redevelopment Act of 1945, Act of August 2, 1946, 60 Stat. 790, ch. 736, D. C. Code secs. 5–701 to 5–719, on the ground that the statute is unconstitutional generally, and also as applied to appellants' particular property. The district court sustained the constitutionality of the Act. The statutory provisions, the administrative actions, and the facts of the case basic to the present controversy may be summarized as follows:

1. *The District of Columbia Redevelopment Act.*—Section 2 of the Act sets out in detail the circumstances requiring enactment of the legislation and the purposes sought to be accomplished. It states: "It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare; and it is hereby declared to be the policy of the United States to protect and

promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; * * *." Congress then declared that control by regulatory processes had proved inadequate and that in its judgment it was necessary to acquire property "by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District."

Congress further found that these purposes could not be accomplished by private enterprise alone, without public participation in the planning and financing of land assembly. It also determined that for economic soundness of the redevelopment, accomplishment of the necessary social and economic benefits, and because of the relationship of an urban area to other parts, sound redevelopment must be done in the light of comprehensive planning for the District of Columbia and its environs. The Section concludes that "the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as

provided in this Act, is hereby declared to be a public use."

Section 4 establishes the District of Columbia Redevelopment Land Agency composed of five members, two to be appointed by the President and three by the District Commissioners, subject to confirmation by the Senate. The Agency is granted the power, among others, "to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, * * *" (Section 5).

Section 6 (a) provides that the National Capital Planning Commission[1] (the "Planning Commission") shall develop a comprehensive plan for the District of Columbia. Preparation and adoption of a redevelopment plan for a particular

[1] Formerly the National Capital Park and Planning Commission. Its membership consists of the Chief of Engineers of the Army, the Engineer Commissioner of the District of Columbia, the Director of the National Park Service, the Commissioner of Public Buildings, the Commissioner of Public Roads, the chairmen of the committees on the District of Columbia of the Senate and the House of Representatives, and, in addition, five eminent citizens well qualified and experienced in city or regional planning, to be appointed by the President, at least two of whom shall be bona fide residents of the District of Columbia or the environs, including one of such residents who shall be appointed from among not less than three nominees of the Board of Commissioners of the District of Columbia. D. C. Code, sec. 1–1002.

project area are provided for under procedures to be described later (*infra*, pp. 6, 7–8).

After the real property in a project area has been assembled, the Agency is authorized to transfer to the appropriate bodies those parcels which are to be used for public purposes such as streets, utilities, public buildings, recreational spaces and schools (Sec. 7 (a)). The remainder of the area is to be sold or leased, either as an entirety or in separate parts, to a redevelopment company or to individuals (Sec. 7 (b)). Preference is to be given in this regard to private enterprise over any public redevelopment company, consistently with the public interest and the purposes of the Act (Sec. 7 (g)). Section 7 (d) requires that every sale or lease provide for carrying out the redevelopment plan and "that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof." The Agency is authorized to include other provisions to assure conformance to the plan "including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land." Section 11 contains further provisions for protection of the plan, particularly with reference to corporate matters.

The Housing Act of 1949, Act of July 15, 1949, 63 Stat. 413, 42 U. S. C. 1441 *et seq.*, providing for federal assistance to local redevelopment pro-

grams throughout the country, contains amendments to the District of Columbia Redevelopment Act so as to enable the District agencies to secure the benefits of the national program. The Housing Act of 1954, Act of August 2, 1954, c. 649, 68 Stat. 590, contains further amendments for the same purpose.

2. *The Redevelopment Plan for Project Area B.*—This case relates to Project Area B, the first project undertaken under the Act. A comprehensive plan for the District of Columbia and its environs was prepared and published by the Planning Commission in 1950 (R. 16). After the completion of various other preliminary steps, the Planning Commission adopted a plan for the Southwest Redevelopment Area and for Area B as the first portion of that larger area to be redeveloped.[2] A survey of Area B showed that 64.3% of the dwellings in the area were beyond repair, 18.4% needed some major repairs, and only 17.3% could be considered satisfactory. It further appeared that 57.8% of the dwellings depended upon outside toilets, 60.3% had no baths, 29.3% had no electricity, 82.2% had no wash basin or laundry tubs and 83.8% had no central heating. The population of the area was 5012, of which 97.5% was Negro. (R. 20.) The record contains an affidavit by Dr. Seckinger, Director of Health for

[2] Submitted herewith as a separate appendix are the resolutions of the Planning Commission to which are attached the plan and supporting documents.

the District of Columbia, describing the conditions in the area and stating that from a public health standpoint it is necessary to redevelop and rebuild the area in question (R. 10–14A, 43–44).

The plan specified the boundaries of Area B by metes and bounds, and allocated the use to be made of the land for various purposes such as residential, first commercial, second commercial, public uses, expressway and streets, with detailed provisions as to types of dwelling units, etc., at least one-third being low-rent housing with a maximum rental of $17.00 per room per month (R. 18–20, 22–26, 33–37; see also, the separate appendix).

The Commissioners of the District of Columbia held a public hearing after published notice and on December 30, 1952, approved the plan which was thereafter certified to the Redevelopment Agency for execution (R. 21). The Agency obtained funds and took steps preliminary to sale or leasing of the area to a redeveloper (R. 21–23, 33).

3. *The proceedings in the present case.*—The complaint alleged that Max Morris[3] owned property at 712 Fourth Street S. W., which was improved by a department store and was not used as a dwelling, residence, house or habitation; and that defendants were proceeding or threatening to proceed to take the property under the redevelopment plan. The Act was asserted to be unconstitutional because it authorized the taking of pri-

[3] Appellants have been substituted because of the death of Max Morris while this appeal was pending (R. 87).

vate property for private use. The administrative actions were alleged to amount to a taking without due process of law because they authorized the taking of plaintiff's private commercial property for private use, and, alternatively, it was alleged that the threatened taking was not authorized by the statute in certain particulars (R. 1–4). The relief sought was an injunction against the taking of plaintiff's property, a judgment declaring the Act to be unconstitutional, a judgment declaring the Act as implemented by the plan to be unconstitutional as to the plaintiff, and other relief (R. 4–5).

A three-judge court was constituted and a motion to dissolve that court was denied (R. 6–7, 41). Appellees moved to dismiss or in the alternative for summary judgment, attaching affidavits showing the facts outlined above (R. 8–44). As already stated, there was included the affidavit of Dr. Daniel L. Séckinger, describing health conditions in Area B, giving statistics as to the death rate because of certain diseases, and stating the reasons for his opinion that failure to redevelop this area completely by exclusion of relatively few buildings would do much to nullify the effectiveness of the redevelopment program (R. 10–13, 43–44). The district court filed a lengthy opinion concluding that if the property is seized for the purpose of eliminating or preventing slums "within the limitations and in accordance with the rules we have described, the fact that it may

be sold subsequently to private persons does not vitiate the alidity of the seizure" (R. 45–76). Judgment of dismissal was accordingly entered and this appeal followed (R. 83–85).

SUMMARY OF ARGUMENT

Although it upheld the District of Columbia Redevelopment Act against appellants' initial challenge, the three-judge district court declared and suggested severe limitations which we believe to be unwarranted and which have not been adopted by the highest courts of the seventeen states which have sustained comparable redevelopment legislation. See, e. g., *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 256 P. 2d 752. In supporting the constitutionality of the Act, we shall discuss the lower court's restrictions as well as answer the appellants' original attack.

A

1. Since Congress is both the national and the local legislature for the District of Columbia, it clearly has general power to promote the health, safety, morals, and welfare of the inhabitants of the seat of the Government by striving to eliminate and prevent slums and slum-breeding conditions. This legislative purpose is universally accepted today as a valid one, and it is also plain that there is a close causal relationship between substandard housing and blighted areas and the growth of slum conditions, with all the injurious

consequences they bring in their train. In the national field, Congress has recognized the need for area redevelopment programs in the Housing Acts of 1949 and 1954; thirty-four states and four territories have enacted redevelopment legislation comparable to the District of Columbia Act.

2. The power of eminent domain, involved here, may be utilized by Congress whenever it is necessary to acquire property in the execution of a proper federal purpose. Cf. General Condemnation Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529–530; *Hanson Co.* v. *United States*, 261 U. S. 581. If the Federal Government has constitutional power to acquire property for a project or program, then it follows that a taking would almost always be for a "public use"; and, in addition, a Congressional declaration, as in the Redevelopment Act, that the proposed use is "public" has been held nearly immune from judicial scrutiny. *United States ex rel. T. V. A.* v. *Welch*, 327 U. S. 546. For the reason noted above, it is clear that there is no occasion to overturn the general legislative finding of "public use" with respect to the Redevelopment Act. The elimination and prevention of slums and slum conditions is clearly a proper function of a government concerned with minimizing disease, delinquency, and injury, and with increasing the opportunities for fruitful living.

B

The fact that portions of the condemned property will be leased or sold to private developers does not prevent acquisition of appellants' land or make the use a "private" one. The Constitution does not require public *occupation* of condemned property, and many cases have upheld takings of land or materials for immediate private possession where, on a larger view, the public use or interest was dominant. See, e. g., *Brown* v. *United States*, 263 U. S. 78; *Highland* v. *Russell Car Co.*, 279 U. S. 253; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525. Under the Redevelopment Act, the public is served and protected by the clearance of slums, the prevention of their return, and by the availability of low-cost housing. In addition, "public use" is preserved by the restrictions imposed on the purchasers and developers who must continue to comply with the redevelopment plan.

C

The key feature of the Redevelopment Act (and of similar state legislation) is that the problem is viewed and treated on an *area* basis. The needs of the area *as a whole* furnish both the justification for this approach and the test by which actions under the Act must be evaluated.

1. There is clearly adequate support for the Congressional view that area planning and redevelopment is appropriate and essential to attain the goals of slum clearance and slum prevention.

Earlier efforts employing regulatory and health legislation, or limited to individual deteriorated buildings, have not been successful, and for over a decade and a half federal and state legislation in this field has turned to area redevelopment as the most promising method. The legislatures have believed that the goal of neighborhoods which will not deteriorate into slums or near-slums can be obtained only by adequate planning and redevelopment of the area as a whole. The opinion of experts and of interested citizens concurs. See, e. g., the Report of the President's Advisory Committee on Government Housing Policies and Programs (December 1953). State court decisions are in accord that the "evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of dilapidated and unsanitary structures." *Matter of N. Y. City Housing Authority* v. *Muller*, 270 N. Y. 333, 341, 1 N. E. 2d 153, 155.

2. Under the area test, commercial property, even though it may not itself be deteriorated, can plainly be taken as part of the execution of the area plan. Individual structures cannot be left free from the plan—to remain vested as immovable obstacles to proper replanning or potential foci of deterioration.

3. Similarly, the Redevelopment Agency must be free to take the fee title to the land. If that were not done, it would normally be impossible to assure the reconstruction and maintenance of the

area as a healthy community, since the present congeries of individual owners obviously cannot be relied on for that purpose.

4. The same standard of the needs of the area-as-a-whole shows that, despite the district court's doubts, the redevelopment area need not be limited to those places on which slums now exist. Properly to rehabilitate and replan a neighborhood, so that it will not at once recommence to go downgrade, requires sufficient space for residences, commercial establishments, parks, recreational facilities, and adequate thoroughfares, light, and air. This could not be accomplished if the area were strictly limited to present overcrowded, slum housing.

The record shows that the district involved here, Project Area B, is now a slum and a blighted, substandard area which needs rehabilitation and renewal, and that the redevelopment plan conforms to and falls under the provisions of the Act. The district court's unfavorable observations about the plan stemmed from its failure to employ the test of the needs of the whole area.

D

The district court also erred in declaring a broader standard of judicial view of condemnations than is admissible under settled doctrine. As noted above, the general Congressional declaration in the Redevelopment Act that takings under it are for a "public use" is largely, if not entirely,

immune from judicial scrutiny. And the settled rule is that the courts cannot inquire into the necessity for condemning a particular piece of property for a "public use." The amount of the property taken, and the type of interest seized, are also free from review under the accepted rules. A few lower courts have attempted to broaden the scope of judicial inquiry, but these efforts have not been successful. A broader rule would entail practical difficulties and would cast upon the courts the choices which Congress has declared should be made by the administrative agencies.

In the redevelopment field, these settled principles require the courts to abstain from attempting to oversee the boundaries of the projects, as well as from passing on the "necessity" for taking this or that structure.

E

The Redevelopment Act properly states the purposes of acquisition and delegates to the administrative authorities the details of selection of particular properties to be acquired to serve those purposes. Condemnation is not regulation and, as with appropriations of money for governmental purposes, very broad criteria are constitutionally sufficient to guide the administrators. But even if the standards appropriate to regulatory legislation were applicable, the Act would be valid. The criteria set forth in Section 2 ("Gen-

eral Purposes") and elsewhere in the Act are comparable to those in many Federal statutes previously sustained. See, e. g., *Lichter* v. *United States*, 334 U. S. 742, 785–786. In addition, there are helpful general guides in the kindred legislation of thirty-four states which can properly be used by the District of Columbia Agency. Cf. *Fahey* v. *Mallonee*, 332 U. S. 245, 250–253.

ARGUMENT

The district court has dismissed the complaint and upheld the validity of the District of Columbia Redevelopment Act as against appellants' attack. The Government, of course, supports this holding and will in this brief refute the challenge which appellants renew here. But the court below, while it sustained the statute's constitutionality, also announced by way of *quasi-dictum* some limitations and restrictions which we believe to be erroneous and severely hobbling to the redevelopment program. A major portion of our argument will therefore be devoted to showing that these limiting rules are unwarranted and unnecessary to sustain the validity of the Act. The highest courts of some seventeen states[4] have already upheld comparable redevelopment statutes without imposing such restrictions, and in many cases these courts have expressly rejected contentions akin to those ac-

[4] Redevelopment programs have been adopted in some 34 states, the District of Columbia, and four territories.

cepted and espoused by the district court below.[8] There is no reason why the District of Columbia Act—passed by Congress "to protect and promote the welfare of the inhabitants of the seat

[8] See *Matter of New York City Housing Authority* v. *Muller*, 270 N. Y. 333, 1 N. E. 2d 153; *Murray* v. *La Guardia*, 291 N. Y. 320, 52 N. E. 2d 884, certiorari denied, 321 U. S. 771; *Kaskel* v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659; *Opinion to the Governor*, 76 R. I. 249, 69 A. 2d 531; *Ajootian* v. *Providence Redevelopment Agency*, 91 A. 2d 21 (R. I.); *State ex rel. Brusstle, City Solicitor* v. *Rich*, 159 Ohio St. 13, 110 N. E. 2d 778; *Opinion of the Justices*, 254 Ala. 343, 48 So. 2d 757; *Nashville Housing Authority* v. *City of Nashville*, 192 Tenn. 103, 237 S. W. 2d 946; *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 54 A. 2d 277; *Schenck* v. *City of Pittsburgh*, 364 Pa. 31, 70 A. 2d 612; *In re Edward J. Jeffries Homes Housing Project*, 306 Mich. 638, 11 N. W. 2d 272; *In re Slum Clearance in City of Detroit*, 331 Mich. 714, 50 N. W. 2d 340; *General Development Corp.* v. *City of Detroit*, 322 Mich. 495, 33 N. W. 2d 919; *Rowe* v. *Housing Authority*, 220 Ark. 698, 249 S. W. 2d 551; *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N. E. 2d 18; *Chicago Land Clearance Comm.* v. *White*, 411 Ill. 310, 104 N. E. 2d 236; *People ex rel Gutknecht* v. *City of Chicago*, 414 Ill. 600, 111 N. E. 2d 626; *Redfern* v. *Board of Commissioners of Jersey City*, 137 N. J. L. 356, 59 A. 2d 641; *Herzinger* v. *Mayor & City Council of Baltimore*, 203 Md. 49, 98 A. 2d 87; *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 256 P. 2d 752; *Hunter* v. *Norfolk Redevelopment and Housing Authority*, 195 Va. 326, 78 S. E. 2d 893; *Velishka* v. *City of Nashua*, 106 A. 2d 571 (N. H. 1954); *Gohld Realty Co.* v. *City of Hartford*, 104 A. 2d 365 (Conn., 1954); *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44 (Mo., July 1954); *Land Clearance for Redevelopment Authority* v. *City of St. Louis*, 270 S. W. 2d 58 (Mo., July 1954); *Crommett* v. *City of Portland*, Sup. Jud. Ct. of Maine, decided Sept. 3, 1954; see also *Redevelopment Agency of City and County of San Francisco*, 266 P. 2d 105 (Cal. App.) (Jan. 29, 1954).

Contra: Adams v. *Housing Authority of City of Daytona Beach*, 60 So. 2d 663 (Fla.); *Housing Authority of the City of Atlanta* v. *Johnson*, 209 Ga. 560, 74 S. E. 2d 891.

of the Government"—should receive a special gloss making it much less effective than the legislation adopted by the several States.

THE DISTRICT OF COLUMBIA REDEVELOPMENT ACT IS CONSTITUTIONAL

Appellants' complaint attacks the Act. on its face, on two grounds (R. 3–4): (a) that no commercial property can validly be taken for redevelopment purposes, and (b) that Congress has invalidly permitted the lease or sale of the condemned property to private persons. In this Court appellants add (c) a challenge to the sufficiency of the legislative standards and (d) adopt and expand the lower court's doubts as to the validity of redevelopment on an area basis. The district court rejected appellants' two original blanket charges but in its lengthy opinion it took special pains to declare or intimate (1) serious restrictions on the taking of the fee title to land encompassed in a project (R. 63), (2) a broad standard of judicial review of the necessity and propriety of takings for redevelopment purposes (R. 59, 63–65), (3) a stern limitation, if not prohibition, on the power to redevelop an area upon only a part of which slums now exist (R. 68–75), and, finally (4) a rejection and narrowing of the legislative standards for authorization of a project (R. 69*ff*). None of these points, whether made by the court below or by the appellants, deserves the acceptance of this Court, as we shall show in the course of presenting

affirmatively the grounds for upholding the Redevelopment Act.

A. CONGRESS HAS GENERAL POWER TO PROMOTE THE PUBLIC HEALTH, SAFETY, MORALS, AND WELFARE OF THE DISTRICT OF COLUMBIA BY ELIMINATING AND PREVENTING SLUMS, AND TO USE EMINENT DOMAIN FOR THAT PURPOSE

1. In legislating with respect to the District of Columbia, Congress exercises both its "national power" and the legislative power which may be exercised by a state in dealing with its affairs. *District of Columbia* v. *Thompson Co.*, 346 U. S. 100, 108; *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 435. The protection of the public health, safety, morals and welfare is, of course, one of the fundamental goals of such powers. In the Redevelopment Act, Congress declared that conditions with respect to substandard housing and blighted areas were injurious to those interests and that its purpose was to eliminate all such injurious conditions. In reporting the bill, the committees of both Houses of Congress stated: "The prompt enactment of this bill is necessary as an emergency measure. The job of clearing Washington of its slums has been too long delayed. It should be commenced immediately. Enactment of this legislation will be a long forward step toward an objective with which no one can quarrel; namely, the elimination of slum conditions which should not be permitted to exist in the Capital of the United States of America." S. Rept. No. 591, 79th Cong., 1st sess., p. 5; H.

Rept. No. 2465, 79th Cong., 2d sess., p. 4. The accomplishment of this purpose was obviously a legitimate subject of legislation for the District.

Moreover, the national interest in the elimination of such conditions has been recognized by Congress in the federal assistance furnished to state and local redevelopment programs under the Housing Act of 1949, Act of July 15, 1949, 63 Stat. 413, 42 U. S. C. 1441 *et seq.*, and, more recently, in Title III ("Slum Clearance and Urban Renewal") of the Housing Act of 1954, Act of August 2, 1954, Public Law 560, 83d Cong., 68 Stat. 590. General federal authority to aid the improvement of housing conditions by grants, credits, and loans was sustained by this Court in *Cleveland* v. *United States*, 323 U. S. 329, as applied to low-cost housing projects, the opinion stating simply (323 U. S. at 333): "Challenge of the power of Congress to enact the Housing Act must fail."

The Act referred to, the United States Housing Act of 1937, Act of September 1, 1937, 50 Stat. 888, 42 U. S. C. 1401, was intended to serve the purpose of remedying "the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation." Redevelopment programs have the same basic objective of eliminating conditions with respect to substandard housing and blighted areas

that are injurious to the public health, safety, morals and welfare. Certainly, no proof is required today of the relationship of substandard housing and blighted areas to the growth of slums and the spread of disease and crime and the consequent disproportionate expenditure of public funds for crime prevention and correction, the treatment of juvenile delinquency and the maintenance of police, fire and accident protection. See *supra*, pp. 7–8, 9, *infra*, pp. 31–39. There can be no question but that the purposes of the Redevelopment Act represent a proper subject for the exercise of the authority of Congress both in the national field and under its authority to legislate for the District of Columbia.*

2. In general, the power of eminent domain may be utilized by Congress as a means of acquiring property in the execution of a proper federal purpose. The authority to obtain property by condemnation is not expressly granted to the federal government in the Constitution. It exists as an incident of sovereignty and as one of the

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*On redevelopment legislation, see, e. g., Riesenfield and Eastlund, *Public Aid to Housing and Land Redevelopment*, (1950) 34 Minn. L. Rev. 610; Brown, *Urban Redevelopment*, (1949) 29 Boston Univ. L. Rev. 318; Robinson, *A New Era In Public Housing*, Wisc. L. Rev., 1949, p. 695; Robinson and Weinstein, *The Federal Government and Housing*, Wisc. L. Rev., 1952, p. 581; Mandelker, *Public Purpose in Urban Redevelopment*, (1953) 28 Tulane L. Rev. 96; Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, (1952) 9 Wash. and Lee L. Rev. 173; *Urban Redevelopment: Problems and Practices* (1953 ed.).

means of carrying out the granted powers. *Kohl* v. *United States*, 91 U. S. 367, 371; *Cherokee Nation* v. *Kansas Railway Co.*, 135 U. S. 641, 656; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529–530; *Chappell* v. *United States*, 160 U. S. 499, 509–510; *United States* v. *Gettysburg Electric Ry.*, 160 U. S. 668, 679. Like other incidental powers, such as the power to create corporations, it is not an independent substantive power but a means by which primary objects are accomplished. "And whenever it becomes necessary, for the accomplishment of any object within the authority of Congress, to exercise the right of eminent domain and take private lands, making just compensation to the owners, Congress may do this * * *." *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529–530. The power is necessary so that the governmental function will not be frustrated by an owner's unwillingness to sell. *Kohl* v. *United States*, 91 U. S. 367, 371–372. The reach of eminent domain must therefore be, and is, as broad as the authority to acquire property by purchase; hence, it is constitutional to give general power to federal officers to acquire property by eminent domain whenever they are authorized to purchase it for the particular public purpose. Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257; *Chappell* v. *United States*, 160 U. S. 499, 511; *Hanson Co.* v. *United States*, 261 U. S. 581; *United States* v. *Advertising Checking Bureau*, 204 F. 2d 770 (C. A. 7), and cases there cited.

The need to acquire property for a redevelopment project obviously cannot be gainsaid, but appellants question whether this is a "public use" within the Fifth Amendment. Since the power of eminent domain is but one of the means by which to acquire the needed property, the question of "public use" in federal condemnation proceedings presents, in one aspect, simply the issue of the constitutionality of the Act under which the land is to be acquired. "If the Federal Government, under the Constitution, has power to embark upon the project for which the land is sought, then the use is a public one." *Barnidge* v. *United States*, 101 F. 2d 295, 298 (C. A. 8); *City of Oakland* v. *United States*, 124 F. 2d 959, 964 (C. A. 9), certiorari denied, 316 U. S. 679. The test is, then, whether Congress has power to bring into being the project or program which its legislation contemplates.

In the Redevelopment Act (Sec. 2), Congress declared that the acquisition and assembly of real property and its leasing or sale for redevelopment, pursuant to a project area redevelopment plan, "is hereby declared to be a public use." Such a declaration does not, of course, conclude the constitutional issue. But the decision of Congress "is entitled to deference until it is shown to involve an impossibility." ***Old Dominion Co.* v.** *United States*, 269 U. S. 55, 66; *United States ex rel T. V. A.* v. *Welch*, 327 U. S. 546, 552. For the

reasons summarily stated *supra*, pp. 19–21, it is clear that the purposes of the Redevelopment Act are a proper subject of action by Congress as legislature for the District of Columbia. Clearance of slums leading to construction of substitute low-rent housing projects—one of the prime features of most redevelopment programs—has been universally upheld in over thirty States as a proper function of government which can be implemented by use of the eminent domain power. See *Herzinger* v. *Mayor & City Council of Baltimore*, 203 Md. 49, 60, 98 A. 2d 87, 92; Riesenfeld and Eastlund, *Public Aid to Housing and Land Redevelopment*, (1950) 34 Minn. L. Rev. 610, 634–5. This has been the holding in the District of Columbia (*Keyes* v. *United States*, 119 F. 2d 444 (C. A. D. C.), certiorari denied, 314 U. S. 636) and the court below accepted that ruling (R. 52).[7] By the same token, there is plainly adequate support for similar public intervention in the clearance of slum-breeding conditions and substitution of an area of residences of varied types and values (and other structures) which will not deteriorate to slum level. *Prevention* of slum and slum-breeding conditions, through the replanning and redevelopment of blighted areas and regions of

[7] The redevelopment plan for Project Area B, involved here, specifies that one-third of the dwellings be for low rent (R. 49, 52).

There is also no doubt as to the validity of the portion of the plan providing for the acquisition of land for public buildings, roads, schools, parks, etc. See R. 52.

substandard housing conditions, is another admissible goal for a government. In short, "the end to be attained by this proposed use, as provided for by the act of Congress, is legitimate, and lies within the scope of the Constitution." *United States* v. *Gettysburg Electric Ry.*, 160 U. S. 668, 681.*

B. THE FACT THAT PORTIONS OF THE CONDEMNED PROPERTY WILL BE LEASED OR SOLD TO PRIVATE DEVELOPERS DOES NOT PREVENT ACQUISITION OF THE LAND

The primary basis of appellants' attack upon the Act is the fact that after the land in the area is acquired and cleared, and appropriate portions set aside for public facilities, the remainder will, if feasible, be leased or sold to private individuals or corporations for redevelopment according to the plan. This, it is argued (App. Br. 7–11), constitutes no more than condemnation of the land from one private owner to sell to another for his own uses.

The argument, which was overtly rejected by the district court (R. 60), ignores the fundamental purpose of the undertaking and erroneously assumes that "public use" is narrowly restricted to physical occupation by the public. The Federal Constitution does not impose any such restriction upon the power of eminent domain. On the contrary, the power may be exercised in

* The court below did not, in terms, hold the legislative purposes invalid (see R. 58–59), but the conditions imposed or intimated by the court (discussed below) may well prevent the attainment of these congressional objectives.

any manner appropriate to the accomplishment of authorized federal purposes. There are many instances where it is desirable, if not essential, to transfer to private ownership land condemned in connection with federal projects. *Brown* v. *United States*, 263 U. S. 78, where land was condemned as a substitute site for a portion of a town to be flooded by a federal reservoir, is typical of many instances where the furnishing of a substitute is the most reasonable method of providing compensation. In *United States* v. *Miller*, 317 U. S. 369, the land was condemned in order to relocate a railroad line flooded by the waters of Shasta Dam. See also *Woodville* v. *United States*, 152 F. 2d 735 (C. A. 10), certiorari denied, 328 U. S. 842. *United States ex rel. T. V. A.* v. *Welch*, 327 U. S. 546, upheld the taking of land because it would be isolated by flooding of a highway and the most practical solution was to include the lands in the Great Smoky Mountains National Park. The Court said (p. 554): "And when serious problems are created by its public projects, the Government is not barred from making a common sense adjustment in the interest of all the public. *Brown* v. *United States*, 263 U. S. 78."

The need for war materials produced many examples of condemnation or requisition in which the public purpose was served through the medium of private enterprise. Thus, in *United States* v. *243.22 Acres of Land*, 129 F. 2d 678,

683 (C. A. 2), certiorari denied, 317 U. S. 698, the court held that proof that the land condemned would be leased with an option to purchase to Republic Aviation Corporation, which was engaged in the manufacture of airplanes for the Government, constituted no defense to the taking. Similarly, the condemnation of land for the purpose of the expansion of the facilities of a company producing steel forgings for naval purposes was sustained in *United States* v. *Marin*, 136 F. 2d 388, 389 (C. A. 9), the court saying, "Congress may employ or authorize the employment of any appropriate means to serve a legitimate public end. *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529, 530; *Highland* v. *Russell Car Co.*, 279 U. S. 253."[9] In the *Highland* case, this Court stated (279 U. S. at 260) that the taking of coal for use by a private manufacturer in the production of snow plows to be sold to railroads during the war would be a public use.[10] That the Constitution does not require the Government to use or occupy condemned land when the public purpose can be accomplished more reasonably by

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[9] As the Court knows, leases and sales of land and plants to war contractors was not uncommon during World War II.

[10] See also *United States* v. *1538 Acres of Land in New Castle County*, 61 F. Supp. 937 (D. Del.), where an easement was taken for a railroad spur to serve a military air base, and *United States* v. *Certain Interests in Land Situate in Franklin County, Ill.*, 58 F. Supp 739 (E. D. Ill.), where an easement was taken for a pipe line to supply natural gas to a manufacturing plant making war supplies.

means of private operation is also apparent from the established rule that the eminent domain power may in appropriate circumstances be given to private corporations. *Luxton* v. *North River Bridge Co.*, 153 U. S. 525. Many of the country's railroads, and some other utilities, could not have been built without exercise of this authority.

The health and welfare aims of the Redevelopment Act are, as we have noted (*supra*, pp. 19–21, 24), clearly legitimate. They will be accomplished primarily by the assembly of the land in the project area, the clearance of structures, and the replanning of the area. Slums and slum-breeding conditions, with all that they entail, are to be eliminated and prevented; and Congress has found that if this can be adequately done (in the particular instance) by private enterprise, the Redevelopment Agency is preferably to employ that means. See Section 7 (g). To characterize such an undertaking as simply a real estate promotion (see App. Br. 6, 8–9) is to ignore both the declared Congressional purposes and the essential requirements of the Act. The elimination of the injurious conditions by such assembly and replanning is itself justification for the project. But the Act goes further. The lessee or purchaser is not given a free hand to deal with the property as he wishes. Instead, he is expressly required to conform to the redevelopment plan. His obligations in this regard must run with the land, and other detailed provisions are made for protection of the

plan (Sections 7 (d), (e), (h), 11). Congress has thus made specific and detailed provisions for such continuing supervision as is necessary to assure the attainment of its objectives. In the light of these controls, it would surely be an invasion of the legislative domain for the courts to reject Congress' choice of private enterprise as the instrument of redevelopment and to insist that only public agencies can be employed.

The overwhelming majority of state courts which have considered similar redevelopment statutes (see fn. 5, *supra*, p. 17) have rejected the constitutional attack based upon the fact that, after assembly, the land may or will be sold to private interests. These decisions have, in the main, emphasized two considerations: First, that the assembly and clearance of the land accomplishes the public purpose and the sale to private interests is purely an incident to the basic program; public ownership is not required to continue for a longer time than is necessary for the accomplishment of the public purpose. E. g., *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 54 A. 2d 277; *Rowe* v. *Housing Authority*, 220 Ark. 698, 249 S. W. 2d 551; *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 233–234, 236, 240–243, 256 P. 2d 752, 766–767, 769–770; *Crommett v. City of Portland*, Sup. Jud. Ct. of Maine (Sept. 3, 1954); *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44, 50–51 (Mo., July 1954). Another considera-

tion which has been stressed is that, in view of the requirement that the property shall be developed and used in accordance with the redevelopment plan for the purpose of preventing a reversion or deterioration to slum conditions, the public use for which the land was taken continues after the property is transferred to private persons and "the public purposes for which the land was taken are still being accomplished." E. g., *Velishka* v. *City of Nashua*, 106 A. 2d 571, 574 (N. H. 1954); *Gohld Realty Co.* v. *City of Hartford*, 104 A. 2d 365, 369–370 (Conn. 1954); *Chicago Land Clearance Comm.* v. *White*, 411 Ill. 310, 316, 104 N. E. 2d 236; *Land Clearance for Redevelopment Authority* v. *City of St. Louis*, 270 S. W. 2d 58, 65 (Mo., July 1954). Both factors are, of course, integral to the District of Columbia Act.

C. CONGRESS COULD VALIDLY AUTHORIZE THE EXECUTION OF THE REDEVELOPMENT PROGRAM ON AN AREA BASIS, INCLUDING THE TAKING OF NONDETERIORATED COMMERCIAL PROPERTY

The key feature of the redevelopment program—the essential characteristic which forms the concept and sustains its validity—is that the problem is resolved on the basis of a "project area," which is defined as an area of such extent and location as may be adopted as an appropriate unit of redevelopment planning for a redevelopment project (Sec. 3 (j)). There is express Congressional recognition of the social fact that injurious slum, slum-breeding, and substandard conditions are caused by a combination of many

factors, including obsolete layout, and that "control by regulatory processes" has "proved inadequate and insufficient to remedy the evils" (Sec. 2); the inadequacy of the structure-by-structure approach, through enforcement of health laws and the condemnation of particular buildings, is thus given by Congress as a major reason for embarking upon this program. And the entire Act is premised upon execution of its purposes in terms of a project area. Section 6 (b) provides for adoption by the Planning Commission "of the boundaries of the project area proposed by it" and the approval of such boundaries by the District Commissioners. The Section then contemplates the adoption and approval "of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area." The remaining provisions of the Act are all couched in terms of the proceedings to be taken with reference to the project area as an entity.

The concept and implications of a project area and redevelopment plan have drawn severe fire in the opinion below which appears to attempt, directly and indirectly, to circumscribe the redevelopment program as a whole and, in particular, to cast grave doubt on the plan for Project Area B which encompasses appellants' property. In our view, the court's strictures and restrictions stem from a fundamental failure to view the problem as a whole in its proper setting (see

infra, pp. 31–46), as well as from an erroneous conception of the role of the judiciary in this field (discussed in Point D, *infra*, pp. 46–53).

1. *There is adequate support for the Congressional view that area planning is appropriate and essential to attain the goals of slum clearance and slum prevention.*

(a). Because it was not satisfied with earlier efforts to solve the problem of detrimental substandard housing and blighted areas by regulatory action or by public low-cost housing projects, Congress discarded the piecemeal or the individual-structure approach and sought to attain its goal by replanning and redeveloping the whole of substantial areas. This is in full accord with the trend of federal and state legislation relating to the elimination and prevention of slums and substandard living conditions.

That the nation's slum problem extended far beyond individual houses was recognized by Congress a decade and half ago in the United States Housing Act of 1937, Act of September 1, 1937, 50 Stat. 888, 42 U. S. C. 1401, where it defined "slum" as "any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals." Subsequent experience amply confirmed the fact that the causes of slums are not limited to, and cannot be reached through

sole concentration on, the individual dilapidated house, but that an area approach was essential to attack the problem successfully. Hence, the Housing Act of 1949, Act of July 15, 1949, 63 Stat. 413, 420, 42 U. S. C. 1441, 1460 (c), provided that a "project" might include

> (1) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or (iii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses, or (iv) open land necessary for sound community growth which is to be developed for predominantly residential uses * * *; (2) demolition and removal of buildings and improvements; (3) installation, construction, or reconstruction of streets, utilities, and other site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan; and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the local public agency itself) at its fair value for uses in accordance with the redevelopment plan.

The entire subject was recently reexamined by Congress, resulting in the Housing Act of 1954, Act of August 2, 1954, 68 Stat. 590, which expanded the scope of general federal redevelopment activities, adopted the broader term "Slum Clearance and Urban Renewal" in Title III, and enlarged the term "project".[11]

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[11] The 1949 Housing Act was amended by Section 311 to provide:

"(c) 'Urban renewal project' or 'project' may include undertakings and activities of a local public agency in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof, in accordance with such urban renewal plan. For the purposes of this subsection, 'slum clearance and redevelopment' may include (1) acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community, or (iii) open land necessary for sound community growth which is to be developed for predominantly residential uses: *Provided*, That the requirement in paragraph (a) of this section that the area be a slum area or a blighted, deteriorated, or deteriorating area shall not be applicable in the case of an open land project: *And provided further*, That financial assistance shall not be extended under this title for any project involving slum clearance and redevelopment of an area which is not clearly predominantly residential in character unless such area is to be redeveloped for predominantly residential uses, except that, where such an area which is not predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public

The President's message of January 25, 1954, on the housing program, had emphasized the necessity of eliminating the *causes* of slum and blight (H. Doc. No. 306, 83d Cong., 2d sess.). The Congressional Committees likewise stressed

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health, safety and welfare in the locality involved and such area is not appropriate for redevelopment for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this title with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this title; (2) demolition and removal of buildings and improvements; (3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal objectives of this title in accordance with the urban renewal plan; and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the local public agency itself) at its fair value for uses in accordance with the urban renewal plan. For the purposes of this subsection, 'rehabilitation' or 'conservation' may include the restoration and renewal of a blighted, deteriorated, or deteriorating area by (1) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; (2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction, or reconstruction, of such improvements as are described in clause (3) of the preceding sentence; and (4) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the local public agency itself) at its fair value for uses in accordance with the urban renewal plan."

the importance of attacking the cause of slums and urban blight and not merely the symptoms (H. Rep. No. 1429, 83d Cong., 2d sess., pp. 2, 13–14, 22–24, 51–52; S. Rep. No. 1472, 83d Cong., 2d sess., pp. 7, 24–25, 35–36, 78–79). The House Report stated (p. 23):

> It should be pointed out that in many cases, rehabilitation of dwellings alone would not reestablish a deteriorated area as a sound neighborhood, as older deteriorated neighborhoods frequently are characterized by the poor condition of their streets and alleys, the lack of adequate sewers, poor lighting, the almost complete lack of playgrounds, parks, or other open spaces, and by old and inadequate school buildings. Parks, playgrounds, and other recreation areas are thus essential to the reestablishment and maintenance of healthy neighborhoods. Also, streets, alleys, sidewalks, street lights, and other improvements must be restored and rehabilitated to meet modern needs in order to achieve sound and lasting rehabilitation and conservation objectives.

As noted above (fns. 4, 5, *supra*, pp. 16–17), the states have been keeping apace. Thirty-four states and four territories have adopted redevelopment legislation similar to the District of Columbia Act now before the Court, and have thus indicated that in their view the vice of urban blight can and should be attacked by area-wide plans. The stark fact that almost three-quarters of the state

legislatures are in accord with Congress goes far to demonstrate the reasonableness of their joint view.

(b). Expert opinion also concurs. The 1954 Housing Act, referred to above, was the outgrowth of an extensive study made by leading students and workers in this field, resulting in a detailed report, in December 1953, entitled "Report of the President's Advisory Committee on Government Housing Policies and Programs" (the "Advisory Report"). In stating the general objectives of the housing program, this Report said (p. 1):

> To wipe out existing slums and to check the spread of blight is a major goal of our housing program. To reach this goal we must remove houses and clear areas of our cities which are beyond recall; we must restore to sound condition all dwellings worth saving. In this way we can establish as healthy neighborhoods vast areas of our cities which are now blighted or badly threatened by blight.
>
> A piecemeal attack on slums simply will not work—occasional thrusts at slum pockets in one section of a city will only push slums to other sections unless an effective program exists for attacking the entire problem of urban decay. Programs for slum prevention, for rehabilitation of existing houses and neighborhoods, and for demolition of wornout structures and areas must advance along a broad unified front to accomplish the renewal of our towns and

> cities. This approach must be vigorously carried out in the localities themselves, and will require local solutions which vary widely from city to city.

A summary of the reasons why a piecemeal attack on slums will not work appears at pages 108–109 of the Report, which likewise discusses in detail the things that must be done and the appropriate role of the Federal Government, as well as the many relevant facts shown by surveys, census reports, and other sources (Advisory Report, pp. 105–252). The Committee was of the clear view that demolition of slums is not enough, even new construction is not enough; slums and slum conditions must be eliminated by preventing the spread of housing blight at earlier stages by replanning and redeveloping neighborhoods (Advisory Report, pp. 111–112).

(c). State court decisions sustaining similar projects have also specifically recognized the propriety of the area-wide approach. "The evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of dilapidated and unsanitary structures." *Matter of N. Y. City Housing Authority* v. *Muller*, 270 N. Y. 333, 341, 1 N. E. 2d 153, 155, 105 A. L. R. 905, 910. "The squalor which people call slums does not consist of an isolated structure, but of a street or section of a city." *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 259, 262–3, 256 P. 2d 752, 777, 779. Answering the contention that the statute was invalid

because not limited to particular bad pieces of property, the court said in the *Foeller* case (p. 262): "One can readily understand that the problem which the area presents cannot be solved by dealing with this or that specific house. The mischievous results which the area yields come from it as a whole, and particularly from the fact that the useful and the outmoded are thrown together promiscuously." Similar contentions were rejected for the same reason in *State ex rel. Bruestle* v. *Rich*, 159 Ohio St. 13, 110 N. E. 2d 778, 789; *In re Housing Authority*, 233 N. C. 649, 65 S. E. 2d 761; *In re Edward J. Jeffries Homes Housing Project*, 306 Mich. 638, 11 N. W. 2d 272; *Stockus* v. *Boston Housing Authority*, 304 Mass. 507, 24 N. E. 2d 333; *Herzinger* v. *City of Baltimore*, 203 Md. 49, 98 A. 2d 87; *Oliver* v. *City of Clairton*, 374 Pa. 333, 340–342, 98 A. 2d 47, 51–52; *Hunter* v. *Norfolk Redevelopment & Housing Authority*, 195 Va. 326, 78 S. E. 2d 893, 901; *Kaskel* v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659; *Gohld Realty Co.* v. *City of Hartford*, 104 A. 2d 365, 370–1 (Conn.); *Velishka* v. *City of Nashua*, 106 A. 2d 571, 574–575 (N. H.); *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44, 53–54 (Mo.).[12]

[12] In most of these cases, the complaining landowner claimed that his property was not substandard or deteriorated and, in some, the property was commercial; the courts acknowledged these claims but nevertheless upheld the legislation because it relates to *areas*.

(d). The teaching of this complex of legislation, expert opinion, and judicial decision is that any particular taking for a redevelopment project cannot be viewed in isolation but must be tested against the standard of the needs of the plan as a whole. The criterion must be similar to that employed by this Court in *United States ex rel T. V. A.* v. *Welch*, 327 U. S. 546, in which it rejected the attitude of the Court of Appeals which, as this Court put it (p. 551): "first analyzed the facts by segregating the total problem into distinct parts and, thus, came to the conclusion that T. V. A.'s purpose in condemning the land in question was only one to reduce its liability arising from the destruction of the highway." The Court's view was that (pp. 552–553): "In passing upon the authority of the T. V. A. we would do violence to fact were we to break one inseparable transaction into separate units. We view the entire transaction as a single integrated effort on the part of T. V. A. to carry on its congressionally authorized functions."

2. *Commercial property may be taken as part of the execution of the area plan.*—From the area viewpoint, it is clear that the fact that appellants' property was used for commercial purposes rather than as a dwelling does not, as appellants argue (App. Br. 11–13), prevent its inclusion within the project area and its acquisition by eminent domain. In accordance with the

area-wide approach, the Redevelopment Act defines real property to include land and also to cover "land together with the buildings, structures, fixtures, and other improvements thereon" (Sec. 3 (m)), and authorizes the Redevelopment Agency to acquire and assemble "real property" (Sec. 5 (a)). These provisions are not limited to dwelling structures for the obvious reason that to exclude commercial holdings would clearly hamper the full achievement of the project, which would be only half-fulfilled at the stage when all slum or substandard housing is demolished; the substitution of an adequate and healthy neighborhood is the next step, and an essential one. All structures in the area, commercial or residential, must therefore be subject to the integrated plan, and none can have a *right* to be left standing as individual obstacles (though, of course, some may remain under the plan). See the state cases cited *supra*, p. 39, some of which involved commercial property. If special exceptions existed, the project might well be prevented by recalcitrant owners from obtaining the space or opportunity to relieve the various injurious factors—overcrowding of dwellings, the lack of parks, proper thoroughfares, and recreational areas and facilities, lack of light and air, outmoded street patterns—which are prime causes of slums (Advisory Report, p. 108). In any case, since the problem, as we have shown

(*supra*, pp. 31 *ff*), is not confined to individual substandard dwellings but extends to whole neighborhoods and districts, the remedy must be equally broad. A complete reorganization of the area is ordinarily necessary in order to eradicate the various causes of the evil. See Dr. Seckinger's affidavit, R. 11–12.

3. *The fee title to the land may normally be taken.*—The overriding standard—the needs of the redevelopment project as a whole—also shows the error in the district court's view that there are strict limitations on the taking of fee title. See R. 63. If slum *clearance* (in the strict sense) were the only goal, the district court might be correct. But to replace the slum with an adequate area which will not soon deteriorate, power to take the fee is essential. For one thing, it cannot normally be expected that individual owners will have the desire, resources, or foresight to replace the demolished structures with the appropriate buildings. For another, reliance can hardly be placed on an unorganized group of individual owners to construct and maintain, in their proper proportions, all the varied buildings—residences of different types, commercial establishments, recreational facilities—which are needed for a healthy community not congenitally destined to retrogress. Thirdly, taking of the fee is necessary so that the Agency can impose the restrictions on use of the property which will prevent the recurrence of slum and substandard

conditions. It is for reasons such as these that state courts have upheld the general right to take fee title for redevelopment projects. See *State ex rel. Bruestle* v. *Rich*, 159 Ohio St. 13, 29, 110 N. E. 2d 778, 788; *Foeller* v. *Housing Authority of Portland*, 198 Or. 205, 253–4, 256 P. 2d 752, 775; *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44, 51, 57 (Mo.).

4. *The condemned area need not be limited to the existing slums.*—Another section of the district court's opinion (R. 68 *ff*) neglects the area test in announcing harsh limitations on the Redevelopment Agency's power to include in a project property which is not now slum. What we have said above about the power to take commercial property and the need for fee title (*supra*, pp. 40–42) applies here as well. The cardinal error is to insist on confining Congress to the destruction of existing slums, leaving replacement to the haphazard will and uncertain finances of the various private owners. To assure the type of neighborhood which is Congress' objective, the area must be planned as a whole and there must be power to take the land, whatever the particular structure now standing thereon.

Above all, the district court could not have written as it did without disregarding the proper legislative aim of slum *prevention*. Deteriorating areas which are not yet slums can be rehabilitated, and healthy neighborhoods which will not

deteriorate can be established. As the Advisory Report (referred to *supra*, pp. 36–38) states (pp. 111–112):

> The Subcommittee has previously emphasized that through demolition and new construction alone, it is impossible to eliminate slums because neither process goes at the cause of the trouble. An examination of the cost of the problem reinforces the necessity for developing a much broader approach to slum elimination. If the nature of the problem itself did not require it, budget considerations alone would be sufficient to impel anyone who was sincerely trying to eliminate slums to find ways of preventing the spread of blight in its earliest stages: of rehabilitating dwellings worth saving and of creating sound healthy neighborhoods out of the existing housing inventory. It is obvious that we must check the cycle of decay before slums are born.

Although it upholds the Act, the opinion below closes with a curious attack on the plan for Project Area B, but does not seem to go so far as to invalidate it (R. 73–75). Though the whole of that plan is not before the Court on this appeal, the observations of the district court impel us to state that the facts in the record make it clear that Project Area B is now a slum and a blighted, substandard area falling squarely within the Congressional classification. See the Statement,

supra, pp. 7–9, and R. 10–14A, 20, 43–44, 47–48. Dr. Seckinger's uncontradicted affidavit (R. 10–14A, 43–44) is proof enough of this fact; Mr. Searles' affdavit (R. 15*ff*) adds further evidence (see, especially, R. 19–20); and the separate appendix containing the redevelopment plan (see fn. 2, *supra*, p. 7) furnishes detailed documentation.

And the redevelopment plan for the area shows that the particular uses to be made of the land were designated in view of the many factors, such as diversity of population, availability of streets and recreational areas, which contribute to the production of slums. The district court's assertion (R. 74) that "the purpose of the plan, in addition to the elimination of slum condi ions, is to create a pleasant neighborhood," results only from rejection of various individual considerations because no one of them was the sole purpose of the plan. Thus, the plan requires that one-third of the dwellings be low-rent units. *Supra*, pp. 8, 24. But this limitation does not mean that the factor of low-rent housing was improperly slighted; sensible planning requires avoidance of maladjustments between supply and need in various categories of dwellings (see Advisory Report, pp. 137–138). Nor does the fact that the streets and alleys, as they must, follow the general pattern for the District of Columbia, while the plan provides that certain of the streets will be widened, render the factor of street patterns completely

irrelevant." Clearly, the purpose of the plan was not just to create a "pleasant neighborhood" but to prevent the recurrence of slum conditions—giving appropriate weight to all the causes of such conditions and the best available methods of prevention. Dr. Seckinger specifically declares that failure to take all the properties could jeopardize the fulfillment of the fundamental purposes of the plan and would create sore spots and health dangers (R. 11–12).

Here, too, the district court erred because it segregated the problem into separate and distinct parts, and failed to take account of the totality. This shortsightedness is particularly revealed in the court's consideration of the other redevelopment decisions and similar cases (R. 69–73). These opinions concern areas and plans quite comparable in their facts and setting to those of Project Area B, and the courts sustain the statutes against broad challenge without the qualifications and restrictions thought necessary here. See fn. 5, *supra*, p. 17 (*Kaskel* v. *Impellitteri*, 306 N. Y. 73, 115 N. E. 2d 659, is a recent noteworthy example). But in its survey of those cases, the district court concludes incorrectly that in each instance there were much more compelling circumstances and, at the same time, the

[15] One of the reasons for repealing the prohibition against use of alley dwellings in the District of Columbia was stated to be that many of these dwellings would be eliminated under redevelopment plans. S. Rep. No. 1762, 83d Cong., 2d sess.

court wholly disregards the statements in, and the tenor of, the opinions upholding the legislation. These decisions actually support the Government's position to the hilt, but the court below, which at bottom differs sharply from the state courts, does not really accept them at their proper weight. See also *Burt* v. *Pittsburgh*, 340 U. S. 802, upholding the Pittsburgh redevelopment plan on the authority of *United States ex rel. T. V. A.* v. *Welch*, 327 U. S. 546, *supra*, pp. 23, 26, 39–40.

D. THE LEGISLATIVE AND ADMINISTRATIVE DETERMINATION OF THE NECESSITY OR DESIRABILITY OF TAKING PROPERTY FOR REDEVELOPMENT PURPOSES IS RARELY, IF EVER, SUBJECT TO OVERTURN BY THE COURTS

The district court's opinion shows that it conceived its position as being a general supervisory authority over execution of the redevelopment program. It stated (R. 65) "We hold that the necessity for the seizure of the title to a parcel of real estate involves facts and judgment, that these are *essentially* for the administrators, and that the function of the courts is limited to determining whether the conclusions of the administrators *are within reason upon the record* and within the congressional delegation of authority." [Emphasis added.] Elsewhere, the opinion indicates that the court should undertake to determine whether the boundary line of the area was properly drawn (R. 69, 73–74), and the whole document is instinct with the view that the court's role in passing upon the need for condemnation

and redevelopment is active and large. However, this conception of the judicial function is clearly contrary to the settled doctrines.

1. As pointed out at the beginning of our argument (*supra*, pp. 22–23), a legislative determination that the use for which property is to be taken is a "public use" is nearly immune from judicial scrutiny. See *United States ex rel T. V. A.* v. *Welch*, 327 U. S. 546, 552, 557. Here, Congress has expressly authorized the taking of property on an area basis and has specifically characterized redevelopment uses as "public" (*supra*, pp. 4–5). There is more than adequate support for this legislative determination. *Supra*, pp. 19–21, 23–24, 31 *ff*. Insofar, therefore, as the court below seeks to revise the Congressional decision to plan an area basis, it has plainly stepped beyond its proper bounds.

2. The further question of the necessity or expediency of the condemnation of the particular property is, as this Court has many times declared, a legislative or political question not the subject of judicial inquiry. *Rindge Co.* v. *Los Angeles*, 262 U. S. 700, 709; *Joslin Co.* v. *Providence*, 262 U. S. 668, 678; *Bragg* v. *Weaver*, 251 U. S. 57, 58–59; *Sears* v. *City of Akron*, 246 U. S. 242, 251; *Boom Co.* v. *Patterson*, 98 U. S. 403, 406. This rule embraces the amount of property which should be taken. "The use for which the land is to be taken having been determined to be a public

use, the quantity which should be taken is a legislative and not a judicial question. *Shoemaker* v. *United States*, 147 U. S. 282, 298." *United States* v. *Gettysburg Electric Ry.*, 160 U. S. 668, 685; *Sweet* v. *Rechel*, 159 U. S. 380, 395. The principle likewise precludes judicial inquiry as to whether fee title or some lesser interest would serve the governmental purpose. *United States* v. *State of South Dakota*, 212 F. 2d 14 (C. A. 8); *Simmonds* v. *United States*, 199 F. 2d 305, 306–307 (C. A. 9); *United States* v. *State of New York*, 160 F. 2d 479, 480, 481 (C. A. 2), certiorari denied, 331 U. S. 832; *United States* v. *Kansas City, Kan.*, 159 F. 2d 125, 129 (C. A. 10); *United States* v. *6.74 Acres of Land in Dade County, Florida*, 148 F. 2d 618, 620 (C. A. 5); *United States* v. *Meyer*, 113 F. 2d 387 (C. A. 7), certiorari denied, 311 U. S. 706. "Necessity" within the meaning of this principle does not mean "indispensable" in the sense that the project could not be executed without the particular land. On the contrary, the statutes and the decisions, in describing the extent of the administrative discretion, have employed synonyms such as "expedient" (*Rindge Co. v. Los Angeles*, 262 U. S. 700, 709), "advantageous" (*Old Dominion Co.* v. *United States*, 269 U. S. 55, 66–67), "desirable" (*United States* v. *Carmack*, 329 U. S. 230, 247), and "advisable" (*Simmonds* v. *United States*, 199 F. 2d 305, 306–307).

Under the procedure of the Redevelopment Act, the necessity for taking particular lands is determined when the boundaries of the project area are adopted by the Planning Commission and approved by the District Commissioners (Sec. 6). Thus, appellants' notion (App. Br. 14) that a court is empowered to examine the boundary lines and determine whether one property on Fourth Street might be included, while other properties in the same block, across the street, or in the next block are excluded, represents an assertion of power to review the necessity for the taking and thus invades a field which is traditionally immune from judicial inquiry. Moreover, Congress was specifically advised as to the effect of the Redevelopment Act. The Senate report on the legislation stated that the Act "places great reliance upon the adequate discretion of the National Capital Park and Planning Commission, subject to the approval of the District Commissioners, to prescribe appropriate plans and rental specifications which shall control the development project areas," and went on to emphasize the fact that the personnel of these two public bodies, as well as that of the new agency "is such as to entitle them to public confidence." S. Rept. No. 591, 79th Cong., 1st sess., pp. 4–5.

For a court to oversee the choice of a boundary line or the size of the project area would not only

run counter to the decisions in this field, but it would also involve many practical difficulties. The process of review would almost inevitably involve simply a comparison with other possible locations of the boundary line and a weighing of the various considerations favoring one location or another. And the premise that there is an administrative record similar to those in proceedings of administrative agencies—the premise of the court below, *supra*, p. 47—misconceives the nature of the authority. The selection of a site is often an engineering question. *United States* v. *49.75 Acres of Land*, 76 F. Supp. 239, 249 (N. D. Ill.). Many factors of judgment are involved and ordinarily there is no occasion to reduce these considerations to formal record. See e. g., *United States* v. *Willis*, 211 F. 2d 1 (C. A. 8), certiorari denied, 347 U. S. 1015. Indeed, at times, interests of national security or other governmental reasons may preclude a detailed discussion of the precise reasons why the taking was necessary.[24] Neither constitutional nor statutory provisions require the preparation of any such formal record (dealing with each parcel) which is subject to review for reasonableness.

3. Some of the decisions of lower courts have,

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[24] For example, in *United States* v. *Merchants Transfer & Storage Co.*, 144 F. 2d 324 (C. A. 9), it was only while the appeal was pending that it was known that operations in the Pacific were approaching a critical stage, an important factor in weighing the necessity of taking warehouse space in Seattle, Washington.

in *dictum*,[15] asserted a limited power of judicial review, phrased in terms of determining whether the administrative official acted in "bad faith" or "arbitrarily or capriciously." Rather than recognizing any such qualification, this Court has stated that, once the question of public use has been determined, "the judicial function is exhausted; that the extent to which such property shall be taken for such use rests wholly in the legislative discretion, subject only to the restraint that just compensation must be made." *Shoemaker* v. *United States*, 147 U. S. 282, 298.[16] In *United States* v. *Carmack*, 329 U. S. 230, 243, the Court found it unnecessary to determine whether the selection could have been set aside by the courts as unauthorized by Congress if the designated officials had acted in bad faith or so "capriciously and arbitrarily" that their action was without adequate determining principle or was unreasoned. This was because the finding of the trial court characterizing the action as "arbi-

[15] We do not know of any case where the final decision of a federal court has resulted in denying the authority to condemn by application of the asserted power.

[16] Because the necessity and expediency of the taking may be determined by such agency and in such mode as a state may designate, a legislative or administrative hearing is not essential to due process. *Bragg* v. *Weaver*, 251 U. S. 57, 58; *Bindge Co.* v. *Los Angeles*, 262 U. S. 700, 709; *Joslin Co.* v. *Providence*, 262 U. S. 668, 678; *Adirondack Railway* v. *New York State*, 176 U. S. 335, 349. In the present case, such a hearing is required by the Act (Sec. 6 (b) (2)), and was actually held (R. 21).

trary" was, in fact, a finding largely of the comparative undesirability and lack of necessity for selection of the site, which were "matters for legislative or administrative determination rather than for a judicial finding". *Ibid.*, p. 247. Similarly, in *United States* v. *43,355 Square Feet of Land in King County, Wash.*, 51 F. Supp. 905, 909 (W. D. Wash.), the trial court held that the Government was acting capriciously and arbitrarily. In reversing the judgment in that case, the court of appeals said: "In essence, while protesting the contrary, the court substituted its judgment on the question of public necessity for that of the Secretary • • •." *United States* v. *Merchants Transfer & Storage Co.*, 144 F. 2d 324, 326 (C. A. 9). More recently, in *United States* v. *Willis*, 211 F. 2d 1 (C. A. 8), certiorari denied, 347 U. S. 1015, the appellate court reversed a trial court's conclusion that the administrative officers had acted in bad faith, or arbitrarily or capriciously, in seeking to acquire particular lands for a dam and reservoir project.

These examples show that the attempted qualification of "arbitrary or capricious conduct" always leads the courts to an examination of the various factors upon which the administrative determination is based and to a judicial analysis of the weight to which such factors are entitled. A conclusion—whether characterized as "arbitrary or capricious" or in "bad faith"—that

those factors are not entitled to the weight accorded to them by the administrative officers would almost always represent no more than a judgment of the court that the purpose might be accomplished without taking the land in question or by selecting some other site for the project." The discretion to make such a judgment rests in the legislature and those to whom it delegates the authority, not the courts. See *supra*, pp. 47–52; see also, the state redevelopment cases, *e. g.*, *Kaskel* v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659. We may add that, of course, there has not been any claim that the Redevelopment Agency, the Planning Commission, or the District Commissioners acted for ulterior purposes or from malice toward this or any other property owner.

E. THE ACT PROPERLY STATES THE PURPOSES OF THE ACQUISITION AND DELEGATES TO THE ADMINISTRATIVE AUTHORITIES THE DETAILS OF SELECTION OF PARTICULAR PROPERTIES TO BE ACQUIRED TO SERVE THOSE AIMS

1. Appellants challenge the adequacy of the Act's standards for guiding administrative action (App. Br. 13–16), and the court below likewise made some observations on that subject (R. 69). But we are not dealing here with a regulatory statute. No problem of delegation of discretion

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[17] Of interest in this connection is the opinion in *United States* v. *40.75 Acres of Land*, 76 F. Supp. 239, 247–249 (N. D. Ill.), tracing the relatively recent origin of the qualification expressed by some courts.

to make laws or impose penalties is involved. Cf. *Schechter Corp.* v. *United States*, 295 U. S. 495, 538–539. Congress exercised its appropriate function when it determined the purposes for which the power of eminent domain is to be exercised. That the subsidiary question whether particular property is needed to execute that purpose is called a legislative, rather than a judicial, issue does not mean that it is a law-making function which must be performed by Congress itself. Such details in execution of the purpose stated by Congress have been delegated in the most general terms at least since the Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257, authorizing condemnation whenever the Secretary of the Treasury or other government officer is empowered to acquire land for public purposes. The authority to acquire land has been expressed by Congress in a wide variety of statutes, with numerous variations as to the amount of discretion vested in administrative officers to select the particular properties. At times, it has been given in statutes appropriating funds for particular purposes. *United States* v. *Advertising Checking Bureau*, 204 F. 2d 770 (C. A. 7); *Polson Logging Co.* v. *United States*, 160 F. 2d 712 (C. A. 9); *United States* v. *Threlkeld*, 72 F. 2d 464 (C. A. 10), certiorari denied, 293 U. S. 620. Thus, the broad delegation to the President of the authority to select the projects to be carried out under the National Industrial Recovery Act was not a dele-

gation of power to make law. *United States* v. *Dieckmann*, 101 F. 2d 421, 425 (C. A. 7), and cases there cited. The question here is similar to that when an appropriation act is attacked as constituting an unlawful delegation of legislative power. Only the most general standards are needed to guide the spending of public money. "That Congress has wide discretion in the matter of prescribing details of expenditures for which it appropriates must, of course, be plain." *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, 321–322. A similarly broad criterion should be all that is required to direct the exercise of condemnation authority.

2. Even if the stricter rule applicable to regulatory legislation were to govern, the Redevelopment Act would easily survive the test. Section 2 contains a policy declaration referring to "substandard housing and blighted areas," to the "use of buildings in alleys as dwellings for human habitation," to injuries to "public health, safety, morals, and welfare," to "the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas," to "the sound replanning and redevelopment of an obsolescent or obsolescing portion" of the District of Columbia, and to "comprehensive and coordinated planning" of the District. Section 3 ("Definitions") contains further guides, as do the operative provisions of the Act (e. g., Sections 5, 6, 7, 11).

These factors furnish standards comparable to many of the regulatory statutes which this Court has upheld. See, e. g., *Lichter* v. *United States*, 334 U. S. 742, 785–786. The district court and appellants complain, however, that they do not know what a "blighted" area is. But if the content of this general criterion cannot be gathered from the remainder of the Act and its history (as we believe to be the case), surely there are sufficient pointers to its meaning in the comparable provisions of the 38 state and territorial redevelopment statutes.[18] Cf. *Fahey* v. *Mallonee*, 332 U. S. 245, 250–253. With that background, the purposes and limits of Congressional action become clear beyond debate. The state courts have sustained their redevelopment statutes against similar attacks on the standards announced by the various legislatures. See *Gohld Realty Co.* v. *City of Hartford*, 104 A. 2d 365, 371–2 (Conn.); *Velishka* v. *City of Nashua*, 106 A. 2d 571, 575 (N. H.); *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 342, 54 A. 2d 277, 283; *Herzinger* v. *Mayor & City Council of Baltimore*, 203 Md. 49, 98 A. 2d 87, 93; *Kaskel* v. *Impelliteri*, 306 N. Y. 73, 115 N. E. 2d 659; *Crommett* v. *City of Portland*, Sup. Jud. Ct. of Maine (Sept. 3, 1954); *State on Inf. of Dalton* v. *Land Clearance for Redevelopment Authority*, 270 S. W. 2d 44, 54–56 (Mo.).

[18] We also agree with the additional discussion of this point in the brief submitted on behalf of the Commissioners of the District of Columbia.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment appealed from should be affirmed.

Respectfully submitted.

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SEPTEMBER 1954.

U. S. GOVERNMENT PRINTING OFFICE: 1954